

General Information Letter: Public Law 86-272 does not protect taxpayers who deliver goods into Illinois themselves.

October 6, 1998

Dear:

This is in response to your letter dated September 22, 1998, in which you request a General Information Letter. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information we have enclosed a copy of 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department.

Although you have not specifically requested either type of ruling, the information you have provided requires that we respond with a general information letter.

In your request you stated:

We are in need of your advice on your rules regarding nexus in the following situation. Please provide a general letter ruling based on the following factual circumstance.

Corporation A (a Michigan corporation) previously filed and paid corporate income tax to the State of Illinois because their company trucks made deliveries in your state and then back-hauled goods to Michigan. There is no payroll or property in Illinois and the only other activity within Illinois consists of the mere solicitation of orders of tangible personal property.

As of DEcember 31, 1997, an independent hauler has been hired to deliver and back haul goods. Is company A protected by Public Law 86-272 from having nexus with Illinois.

#### **Department Analysis**

The Department does not provide letter rulings on the determination of whether nexus exists between a taxpayer and Illinois. Only in the context of an audit where the auditor has access to full information may a determination as to nexus be made. However, I can relate the general law concerning P.L. 86-272. Under P.L. 86-272, protection is given to taxpayers who merely solicit sales of tangible personal property in another state. Such taxpayers may ship those goods to the other state (such as Illinois) by common carrier, by an independent contractor or with the taxpayer's own trucks without losing the protection of P.L. 86-272.

Action by a seller beyond the delivering of goods may forfeit the protection of P.L. 86-272. For example, if the seller delivers the goods of another seller, or picks up goods in Illinois to take back to the home state, the protection of P.L. 86-272 is lost and nexus results. See, Letter Ruling 82-0462, 1982 WL 16521 (Ill.Dept.Rev.). Hence, backhauling goods by a company, even by an independent contractor, does create nexus. The only exception to this rule is if a common carrier is used to transport the goods back to the home state. When a common carrier is used, protection under P.L. 86-272 is maintained. You do not note in your letter whether the independent contractor backhauling goods is a common carrier so I cannot comment on your situation specifically.

I hope that this has been helpful to you. If you have additional questions please feel free to contact me at the above address.

Sincerely,

Charles E. Matoesian  
Associate Attorney (Income Tax)